



Agenda Date: 7/21/03

Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

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ENERGY

IN THE MATTER OF THE PETITION OF)
ATLANTIC CITY ELECTRIC COMPANY)
D/B/A CONECTIV POWER DELIVERY)
FOR APPROVAL OF AMENDMENTS)
TO ITS TARIFF TO PROVIDE FOR AN)
INCREASE IN RATES FOR ELECTRIC SERVICE)

SUMMARY ORDER

DOCKET NO. ER02080510

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Summary Order memorializes, in summary fashion, the action taken by the Board of Public Utilities ("Board") in these matters at its July 21, 2003 public agenda meeting by a vote of five Commissioners. The Summary Order is intended to fulfill the requirement that new rates be implemented by August 1, 2003 pursuant to the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et. seq. and the Board's Orders implementing EDECA. The Board will issue a more detailed Final Decision and Order in these matters, which will provide a full discussion of the issues as well as the reasoning for the Board's determinations.

This matter concerns a petition dated August 1, 2002, filed by Atlantic City Electric Company d/b/a Conectiv Power Delivery ("ACE" or "Company"), requesting an increase in rates for electric service pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5.12 ("deferred balance case"). The purpose of the petition was to set the Market Transition Charge ("MTC"), Net Non-Utility Generation Charge ("NNC"), and Societal Benefits Charge ("SBC") for the period August 1, 2003 through May 31, 2004 and, in so doing, commence recovery of the Company's deferred balances authorized by the Board's March 30, 2001 Final Decision and Order *In the Matter of Atlantic City Electric Company – Rate Unbundling, Stranded Costs, and Restructuring Filings*, BPU Docket Nos. EO97070455, EO97070456, EO97070457 ("Final Order") at 73; at 84, paragraph 1; at 93, paragraph 27.

This Order does not address ACE's petition for an increase in its base rates, *I/M/O the Petition of Atlantic City Electric Company d/b/a Conectiv Power Delivery for Approval of Amendments to its Tariff to Provide for an Increase in Rates for Electric Service*, BPU Dkt. No. ER03020110 ("base rate case"), which was filed on February 1, 2003, and which is now pending at the Office

of Administrative Law ("OAL"); nor does this Order address the Board's determinations at its July 25, 2003 public agenda meeting with respect to various matters concerning ACE's B.L. England generating station, which will be memorialized in a separate written decision.

ACE's deferred balance case was transmitted to the OAL on October 25, 2002, and was assigned to Administrative Law Judge ("ALJ") Diana C. Sukovich for hearing. In addition, pursuant to the Board's Order dated July 22, 2002, *Order Directing the Filing of Supplemental Testimony and Instituting Proceeding to Consider Audits of Utility Deferrals*, BPU Docket Nos. ER02050303, EO97070461, EO97070462, and EO97070463 ("July 22 Order") an audit was performed by Mitchell & Titus ("M&T") and Barrington-Wellesley Group, Inc. ("BWG") (collectively "Auditors"), on ACE's deferred balances, which was transmitted to the OAL and reviewed as part of this proceeding.

This matter now comes before the Board on a record developed in hearings before the ALJ, who issued an Initial Decision ("I.D.") on June 2, 2003. In addition to the Company, Board Staff ("Staff") and the Division of the Ratepayer Advocate ("RPA"), the parties to this proceeding include the Independent Energy Producers of New Jersey ("IEPNJ") and the New Jersey Large Energy Users Coalition ("NJLEUC"). In addition, the ALJ granted participant status to Rockland Electric Company, PPL Energy Plus, LLC and Cogentrix Energy, Inc.

The Board acknowledges and appreciates the efforts of ALJ Sukovich in presiding over this proceeding and in producing a detailed and thorough Initial Decision.

Based on the Board's review of the extensive record in this proceeding, the Board has determined that the Initial Decision, subject to certain modifications which will be set forth herein, represents an appropriate resolution of this proceeding. Accordingly, except as specifically noted below, and as will be further explained in a subsequent detailed Final Decision and Order, the Board HEREBY ADOPTS and incorporates by reference as if completely set forth herein, as a fair resolution of the issues in this proceeding, the Initial Decision.

The modifications and clarifications to the Initial Decision which the Board HEREBY ORDERS are summarized as follows.

1. The deferred balances on which the Initial Decision was based reflected actual data through January 31, 2003, as supplied by the Company by letter dated March 5, 2003, and forecast data for the months of February through July 2003.¹

Based on this data, the Company's combined BGS, NNC and MTC deferred balance was projected to be \$191.8 million (excluding accrued interest), and its deferred SBC balance was projected to be \$(20.1) million, *i.e.*, to be overrecovered by that amount, also excluding accrued interest, as of July 31, 2003, the end of the four-year transition period approved by the Board for implementing the rate reductions, retail choice and other provisions of the EDECA. Of these amounts, the ALJ recommended disallowing a

¹ From Rebuttal Schedules HACR-10 (deferred balances before interest) and HACR-15 (interest calculation) attached to the Rebuttal Testimony of Company witness Herbert A. Chalk (Exhibit P-13).

total of \$9.4 million of deferred BGS, NNC and MTC costs, and \$1.4 million of deferred SBC costs, essentially all of which was recommended by the Auditors.²

After reflecting a further update to reflect actual data through May 31, 2003, as supplied by the Company by letter dated June 23, 2003, and forecast data for the months of June and July from Exhibit P-3 referred to supra, the Company's combined BGS, NNC and MTC deferred balance, including estimated interest of \$9.9 million, is projected to be \$195.0 as of the end of the transition period. In accordance with long-standing Board practice with respect to updating to reflect actual data, the Board HEREBY ADOPTS this amount as the most current estimate of the Company's combined BGS, NNC and MTC deferred balance.

Moreover, in view of the shortcomings in the administration of the Company's BGS procurement throughout the transition period asserted by the parties, in particular, the deficiencies in the Requests for Proposals ("RFPs") the Company issued to obtain a portion of its BGS supply, as identified by the Auditors and the ALJ, the lack of parting contracts entered into with the purchaser of the Company's divested and planned to be divested generating units, as well as the Company's relatively poor performance compared to the PJM benchmark developed by Staff and the achieved results of Jersey Central Power & Light Company ("JCP&L") and Rockland Electric Company ("RECO"), the Board ACCEPTS the following disallowances recommended by the ALJ:

- \$6.1 million related to ACE's acceptance of only one-half (200 Mw) of reasonably-priced capacity offered in response to the Company's RFP No. 3:
- \$2.6 million related to costs booked to the deferred balance in error, which adjustment was accepted by the Company:
- \$0.5 million interest adjustment, related to the tax benefit associated with the buyout of the power purchase agreement ("PPA") with the Pedricktown Non-Utility Generation ("NUG") project, which adjustment was accepted by the Company.

Additionally, based on its review of the record developed in this proceeding, the Board is of the view that certain additional proposed disallowances have been adequately supported in the record and are warranted. Accordingly, the Board HEREBY MODIFIES the Initial Decision and HEREBY DISALLOWS the following additional BGS deferred costs, as recommended by the RPA and supported by Staff:

1. \$25.5 million relating to excessive amounts paid for energy purchased under contracts with third party suppliers in July and August 2001 (538,400 Mwh purchased at an average of cost of \$119.4 per Mwh as compared to an assumed replacement cost of \$72.0 per Mwh); (RPA Initial Brief at 5).
2. \$3.4 million relating to excess amounts paid for capacity purchased during the first three years of the transition period ended July 31, 2002, as compared to the

² Of the \$9.4 million of total BGS, NNC and MTC disallowances, \$9.2 million was recommended by the Auditors, and an additional \$0.2 million (a credit for third party tranche fees) was independently recommended by the ALJ.

amount received from capacity sales during the period. Id. Including disallowed interest of \$6.5 million³, the Board HEREBY FINDS the total BGS, NNC and MTC deferred balance disallowances to be \$44.6 million.

3. Additionally, as recommended by Staff, the Board HEREBY DEFERS for review and determination in the Company's currently-pending base rate case, consideration of \$3.5 million of BGS administrative costs, \$15.3 million of restructuring/transition costs, \$4.1 million of consolidated third party supplier billing costs, and \$2.5 million of legal and other costs incurred in a dispute with the Logan NUG project over the project's heat rate.⁴ Accordingly, pending the Board's decision in the base rate case, the Company shall continue to defer these costs, aggregating \$25.4 million, with interest after August 1, 2003 accrued at the rate set forth below.
4. After reflecting the \$44.6 million of disallowances and \$25.4 million of costs that are to be reviewed further in the base rate case, and subject to a true-up to reflect 1) actual data through July 31, 2003; 2) the results of the Board-ordered Phase II Audit of the Company's deferred balances; and 3) a recalculation of accrued interest to reflect these adjustments as well as the disallowances set forth above and the change in the interest calculation methodology set forth below, the Board HEREBY AUTHORIZES the Company to recover a combined BGS, NNC and MTC deferred balance of \$125.0 million. Additionally, pending our decision on the Company's yet-to-be filed petition seeking securitization of the portion of this balance we determine to be eligible for securitization, the Board HEREBY APPROVES interim deferral recovery of \$13.035 million per year before application of the 6% New Jersey Sales and Use Tax. As recommended by Staff,⁵ this recovery is based on a 10-year amortization of the recoverable balance "net of tax" (i.e., after deducting accumulated deferred income taxes associated with the deferred costs from the balance) and an interest rate equal to the yield on one-year constant-maturity Treasury notes plus 30 basis points, which is determined herein to be 1.3%.⁶
5. In order to establish uniformity among the electric utilities, and for the reasons set forth by the RPA and Staff, the Board HEREBY REJECTS the ALJ's findings on the interest calculation methodology, and DIRECTS the Company to recalculate the interest accrued during the transition period on a net of tax basis (to accrue interest on the deferred balances less the related accumulated deferred income taxes), and, consistent with the methodology employed by RECO, to compound

³ Interest of \$9.9 million, as noted above, less \$3.4 million of interest from Appendix SRB-1 attached to Staff's Reply Brief.

⁴ Following the July 21, 2003 agenda meeting, the Company advised Staff that \$4.6 million received from Logan in partial settlement of the dispute was credited to the NNC balance in May 2003. Accordingly, the \$2.5 million of related costs should now appropriately be debited to the balance as well.

⁵ Pursuant to a letter from the Board's Secretary dated March 25, 2003, the issue of interim deferral recovery was not addressed by the ALJ.

⁶ Based on the rate for the week ending June 27, 2003, as reported in the Federal Reserve Statistical Release dated July 1, 2003.

interest annually (add accrued interest to the balance on which interest is accrued annually). As set forth above, the interim deferral recovery is also to be calculated on a net of tax basis. Additionally, going forward (effective August 1, 2003), the interest rate to be used in accruing interest on SBC, BGS, NNC and MTC deferrals shall be the monthly rate actually incurred on the Company's short-term debt (debt maturing in less than one year), or the rate on equivalent temporary cash investments if the Company has no short-term debt outstanding.

6. With respect to the overrecovered SBC balance, currently estimated to be \$(23.7) million, including accrued interest of \$(1.2) million,⁷ the Board HEREBY MODIFIES the Initial Decision as follows:

Of the total overrecovered SBC balance, approximately \$0.6 million shall be used to offset deferred Universal Service Fund ("USF")/Lifeline costs incurred by the Company in the year 2002, as proposed by the RPA, and an additional \$9.0 million shall be used to offset current USF/Lifeline costs pursuant to the Board's July 16, 2003 Order *I/M/O the Establishment of a Universal Service Fund Pursuant to Section 12 of the Electric Discount and Energy Competition Act of 1999*, BPU Dkt. No. EX00020091.

Additionally, as proposed by the Company, the portion of the SBC deferred balance associated with demand side management costs (approximately \$1.8 million) shall be used to offset ongoing Clean Energy Program expenditures included in the SBC of \$11.4 million per year.

As recommended by the Auditors, and accepted by the ALJ, \$1.4 million associated with the Company's booking of uncollectible accounts is HEREBY DISALLOWED.

The remaining balance of approximately \$10.9 million shall be used to reduce the Company's ongoing SBC charge billed during the period August 1, 2003, through May 31, 2004.

7. With respect to the Company's unbundled rates going forward [the SBC, NNC and MTC (other than the charge for interim deferral recovery)], in view of the Company's continued retention of its fossil generating units, the Board HEREBY DIRECTS the Company to maintain its existing MTC charge unchanged.⁸ The Board HEREBY APPROVES the \$40.1 million increase in the NNC as proposed by the Company. Additionally, the Board HEREBY DIRECTS the Company to eliminate annual nuclear decommissioning costs from the SBC (\$7.3 million), and HEREBY APPROVES the inclusion of Clean Energy and Consumer Education Program costs in the SBC as proposed by the Company (approximately \$4.6 million in the aggregate).

⁷ Based on actual data through May 2003 and forecast data for the months of June and July, as described above in connection with the combined BGS, NNC and MTC deferred balance.

⁸ On the assumption that the fossil units would be divested in the first quarter of this year, the Company had proposed that the MTC be prospectively reduced by \$10.8 million.

8. With regard to Rate Design, the Board HEREBY ADOPTS the Initial Decision's recommendation to approve ACE's request to utilize a flat energy charge to recover both MTC and NNC costs with an adjustment for loss factors as proposed by NJLEUC, supported by Staff and accepted by the Company. The Board FURTHER ADOPTS the ALJ's recommendation that the deferred balances be recovered through application of the flat energy charge to all kwh sales uniformly across all customer rate schedules.

In conclusion, the modifications summarized herein result in a net increase in the Company's SBC, NNC and MTC charges of approximately \$39.5 million, excluding BGS, which equates to an average rate increase to all customer classes of approximately 4.7%. In addition, pursuant to EDECA, a further adjustment to ACE's rates must be reflected to recognize actual BGS charges commencing August 1, 2003, which were previously approved by Board Order dated February 6, 2003, *I/M/O the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et. seq. – Basic Generation Service Auction Results*, BPU Docket No. EX01110754. The Company estimates that the average BGS increase for all fixed price customer classes will be about 3.4% for a total increase of 8.1%.

For the average residential customer using 750 kwh per month, the average annual increase will be approximately 6% (from \$85.77 per month to \$90.93 per month).

Within five (5) days of the date of this Order, the Company is HEREBY DIRECTED to submit to the Board final revised tariff pages conforming to the terms and conditions of this Summary Order. The Company shall consult with Staff to assure the adequacy of the required submissions.

Finally, consistent with the recommendations of Staff, the Board HEREBY DIRECTS the Company to file monthly reports with the Board that show, for its share of each NUG project, the energy and capacity purchased (MWH and MW), the amount paid for energy and capacity, the disposition of the energy and capacity (i.e., whether it was sold in the wholesale power market or otherwise), the amount received from the sale of the energy and capacity, as well as the value of the energy if it were priced at the average monthly PJM LMP and capacity deficiency rates, and the value if it were priced at the rate payable for BGS supply obtained pursuant to the statewide auction.

DATED: July 31, 2003

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY